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Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| Transgender Law Center, et al         | ) | Case No. 3:19-cv-03032 SK  |
|                                       | ) |                            |
| Plaintiff,                            | ) |                            |
|                                       | ) | <b>DECLARATION OF TONI</b> |
| v.                                    | ) | <b>FUENTES</b>             |
|                                       | ) |                            |
| U.S. Department of Homeland Security, | ) |                            |
| Immigration and Customs Enforcement,  | ) |                            |
|                                       | ) |                            |
| Defendant.                            | ) |                            |

**I. INTRODUCTION**

I, Toni Fuentes, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Officer of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act (“FOIA”) Office. I have held this position since September 30, 2018 and am the ICE official immediately responsible for supervising ICE responses to requests for records under the Freedom of Information Act, 5 U.S.C. § 552 (the FOIA), the Privacy Act, 5 U.S.C. § 552a (the Privacy Act), and other applicable records access statutes and regulations. Prior to this position, I have held numerous FOIA positions over the past 20 years to include: FOIA Director for the National Protection and Programs Directorate (“NPPD”) at the U.S. Department of Homeland Security (“DHS”);

Government Information Specialist for Department of Justice, U.S. Marshals Service, Office of General Counsel; Government Information Specialist for the Department of Defense, Office of the Inspector General's FOIA Office; FOIA Officer, Paralegal Specialist for Department of the Navy, NAVAIR/NAWCAD's Office of Counsel; Management and Program Analyst for Department of Homeland Security, Customs and Border Protection's FOIA Office; and FOIA Paralegal Specialist for the National Aeronautics and Space Administration's Office of Chief Counsel.

2. My official duties and responsibilities include the general management, oversight, and supervision of both the Intake Unit and the Litigation Processing Unit of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding initial intake of FOIA and Privacy Act requests received by ICE, as well as the status, processing, and productions of ICE's federal FOIA litigations. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the PA.

3. I make this declaration in my official capacity based on my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. This declaration is submitted to provide specific processing statistics, information concerning the ICE FOIA Office staffing, and FOIA request trends that have impacted the ICE FOIA Office workload for the purpose of the parties' discussions of the processing of records responsive to the FOIA requests at issue in the above-referenced case.

## **II. CURRENT STATISTICS REGARDING FOIA REQUESTS SUBMITTED TO ICE**

5. The ICE FOIA Office is currently processing approximately 65,169 requests, of which 2,755 requests are original requests submitted to the ICE FOIA Office, 131 are consults, and 62,283 requests are a referral backlog from U.S. Citizenship and Immigration Services ("USCIS").<sup>1</sup>

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<sup>1</sup> Other Federal agencies may send FOIA requests to ICE for either consultation and/or referral. These consultations and referrals require a significant amount of work by the ICE FOIA Office, as they must be treated like a normal FOIA request and require either a response back to the originating agency or a direct response to the requester.

1           6.       This past fiscal year ("FY"), the ICE FOIA Office has experienced a substantial and  
2 dramatic increase in the number of FOIA requests received by ICE compared to previous years. In FY  
3 2015, the ICE FOIA Office received 44,748 FOIA requests; 63,385 FOIA requests in FY 2016; the  
4 number of requests received decreased in FY 2017 to 47,893, but was then followed by a record high of  
5 70,267 FOIA requests in FY 2018. That number has increased even further this year - in FY 2019, the  
6 ICE FOIA Office received 123,370 requests.

7           7.       In short, between FY 2017 and FY 2019 the ICE FOIA Office experienced approximately  
8 a 258% increase in FOIA requests. This dramatic increase in ICE FOIA's workload is attributed to the  
9 aforementioned increased number of referrals ICE receives from USCIS and the changing political  
10 climate reflecting increased public interest in the Department's operations pertaining to the recent  
11 Presidential and/or Executive Orders and subsequent guidance from the Secretary.

12           8.       In addition to the increasing volume of FOIA requests, ICE has also experienced an  
13 increase in the complexity of FOIA requests, both in terms of volume and substance. For example, it is  
14 now routine to see FOIA requests with 50 to 60 sub-parts comprising several pages, searches of  
15 numerous program office, and thousands of pages. These FOIA requests take considerably longer to  
16 process, due to an extensive search that is usually required, and the intricacies of the documents and/or  
17 data produced. In FY 2017, one FOIA requester alone- a data clearing house- filed more than 270 FOIA  
18 requests seeking extensive data extracts.

19           9.       All these factors have nearly tripled the ICE FOIA Office's overall workload in  
20 comparison with the same date for FY 2017. In response to the increasingly heavy workload, the ICE  
21 FOIA Office has adopted the accepted practice of generally handling backlogged requests on a "first-in,  
22 first-out basis, which ensures fairness to all FOIA requesters by not prioritizing one request over  
23 another."

24           10.      The ICE FOIA Office tracks all of the requests it receives, both directly and by referral,  
25 through FOIAXpress, which is ICE FOIA's case management system. If needed, before importing  
26 documents to FOIAXpress, the ICE FOIA Office will use a separate program called Relativity to  
27 initially process documents for productions. This software allows ICE FOIA to remove duplicate

documents and group e-mail threads, reducing overall page counts and thus facilitating faster and more efficient document production. Relativity can also facilitate narrowed searches within document sets, which is a function that FOIAXpress lacks. However, FOIAXpress and Relativity are not interoperable systems, and documents cannot be transferred or shared between the systems in a convenient fashion.

### **III. ICE FOIA OFFICE'S STAFF LEVELS AND WORKLOAD**

11. A consequence of the increasing complexity and volume of ICE FOIA's workload (see paragraphs 6-8 ) is that more of those FOIA requests become subject to litigation in U.S. District Court.

12. The ICE FOIA Litigation Processing Unit is currently comprised of two full-time experienced paralegals and one part-time paralegal who are processing 134 active FOIA litigations. There are currently 41 FOIA litigation cases that have rolling productions, which yield a monthly litigation production page count of between 25,000-28,000 pages. Additionally, there are cases that are added each month which increase the case list and resulting productions. With the monthly additions, the two full-time and one part-time paralegals will be required to process nearly 40,000 pages per month. These page count numbers do not take into account the more than 50 other FOIA litigation matters that involve a single production (instead of a rolling production schedule).

13. The ICE FOIA Litigation Processing Unit also drafts, assigns, and tracks any and all searches for responsive documents in response to FOIA litigations. These search taskings can span dozens of ICE program and field offices and require the Unit to keep track of hundreds of thousands of responsive documents, as well as the office's search documentation.

14. The two full-time and one part-time paralegals who comprise the ICE FOIA Litigation Processing Unit also have other duties, in addition to processing documents pursuant to litigation. For example, these three individuals also prepare various reports, process Congressional inquiries, redact Prison Rape Elimination Act ("PREA") and Office of Detention Oversight ("ODO") reports, send out FOIA (b)(4) submitter notices on relevant cases, and handle consults and referrals from other agencies as they come in. The Unit also supports attorneys in the ICE Office of the Principal Legal Advisor on federal FOIA litigations, assisting in the creation of *Vaughn* indexes, declarations, and other necessary filings.

1        15.     The members of the ICE FOIA Litigation Processing Unit also manage a host of other  
2 administrative duties, including (but not limited to) monitoring the ICE FOIA inbox (which receives  
3 from 12,000-18,000 emails annually), processing all classified consults and referrals, scheduling  
4 productions, preparing clearance e-mails, and preparing other correspondence to requesters.

5        16.     In addition, due to the loss of eight ICE FOIA employees due to budget cuts, members of  
6 the ICE FOIA Litigation Processing Unit are also increasingly required to assist other units within ICE  
7 FOIA with the processing of incoming FOIA requests, additional congressional inquiries, and other  
8 projects at any given time.

9        17.     In total, each personnel team member can process on average 100-300 pages per day,  
10 depending on the complexity of the documents, and still keep up with their overall job requirements.

11        18.     Outside of the Litigation Processing Unit, the ICE FOIA Office currently has a staff of 27  
12 FOIA specialists dedicated to processing FOIA requests solely at the administrative level. The  
13 processors are responsible for responding to the original FOIA requests and, if necessary, reprocessing  
14 remands on appeal. In FY 2018, these FOIA processors completed and closed out 66,699 FOIA  
15 requests. Unfortunately, at this time, ICE FOIA does not have authority to hire any additional FOIA  
16 processor employees; indeed, as mentioned above, ICE FOIA employees have been lost due to budget  
17 cuts.

18        19.     In order to meet its obligations for all cases in litigation and ensure that all of the FOIA  
19 matters progress so that each requester can receive a response, the ICE FOIA Office typically cannot  
20 process more than 500 pages per month for each case. Any increase in one matter would hinder ICE  
21 FOIA's ability to process records for productions in other matters.

22        20.     Based upon discussions between ICE and Plaintiff, the ICE FOIA Office has agreed to  
23 process 750 pages per month in this case in an attempt to negotiate a resolution to this matter in good  
24 faith.

25        **IV.     JURAT CLAUSE**

26        I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge  
27 and belief.

28        DECLARATION OF TONI FUENTES  
Case No. 3:19-cv-03032 SK

1 Dated: December 6, 2019



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